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NOTES

THE LAW SCHOOL.—The resgistration for the academic year 1921-22, the 168th of the University, reveals an increase of 96 over last year. As of October 1st, there are 632 students registered in the Law School.

The course in Bankruptcy and Insolvency, and in Pleading II, omitted during the year 1920-21, are offered this year by Professor Herman Oliphant, the former in the Winter Session and the latter in the Spring Session.

Two new courses have been placed in the curriculum. Trial Practice is being given by Professor Young B. Smith in the Winter Session; and Illegal Contracts and Combinations, will be offered by Professor Herman Oliphant in the Spring Session.

CONTRIBUTORY NEGLIGENCE OF CHILDREN.—In the recent case of *Ledcrer v. Connecticut Co.* (1920) 95 Conn. 520, 111 Atl. 785, a boy under the age of six without looking rode his tricycle from the sidewalk on to the car tracks, and was killed by a car negligently managed by the defendant. The lower court charged that the boy was required to use such care as reasonably prudent boys of a similar age would use under the circumstances; also, that if the boy knew he was doing a dangerous thing and yet ran in front of the car, verdict should be for the defendant. *Held*, this is ground for reversal. An immature child is required to use only such care as the average child of similar age, judgment, and experience would under the circumstances. Knowledge of the danger does not show negligence if the plaintiff acted like others of a similar capacity.

This case necessarily implies that a child below the age of six might conceivably be guilty of contributory negligence. But there is considerable authority holding that, as a matter of law, a child under the age of six cannot be charged with negligence.¹ Some jurisdictions go even further, raising the age limit to seven,² and eight,³ while others would restrict it to five⁴ or four.⁵ All alike explain the rule by the legal fiction of a "conclusive presumption" that children below the set age cannot exercise any kind of care.⁶ The courts were probably influenced in their judgment by a similar rule in criminal law where minors below seven are deemed incapable of committing crimes. Yet there is a fundamental difference between the situation in the two cases. An act is not criminal unless it was done with the *mens rea*. The person charged with the crime must have the ability of distinguishing right from wrong.⁷ Clearly a

¹ *Pascagoula etc. Co. v. Brondun* (1909) 96 Miss. 28, 50 So. 97. The problem is differently phrased in New York, by asking when a child becomes *sui juris*. It reaches that period when it becomes capable of taking care of itself. Until that time the negligence of its guardian may be imputed to it. See *Jacobs v. Koehler Sporting Goods Co.* (1913) 208 N. Y. 416, 418, 102 N. E. 519.

² *Dodd v. Spartenburg etc. Co.* (1913) 95 S. C. 9, 78 S. E. 525; *Richardson v. Nelson* (1906) 221 Ill. 254, 77 N. E. 583; see *McDermott v. Consolidated Ice Co.* (1910) 44 Pa. Super. Ct. 445, 451; *Levine v. Railway* (1903) 78 App. Div. 426, 429, 80 N. Y. Sup. 48.

³ *Erie Ry v. Swiderski* (C. C. A. 1912) 197 Fed. 521.

⁴ *Eskildsen v. Seattle* (1902) 29 Wash. 583, 70 Pac. 64.

⁵ *Hamilton v. Morgan etc. S. S. Co.* (1890) 42 La. Ann. 824, 8 So. 586.

⁶ Georgia reasons oddly enough that children below seven are incapable of exercising due care, because they cannot distinguish right from wrong. *Rhodes v. Georgia etc. Co.* (1889) 84 Ga. 320, 10 S. E. 992.

⁷ 1 Bishop, *New Criminal Law* (8th ed.) 219.